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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 GIRLIE LINGAD,

11 Petitioner,

12 v.

13 MICHAEL CHERTOFF, SECRETARY
14 OF THE DEPARTMENT OF
15 HOMELAND SECURITY, and ALBERTO
16 GONZALES, ATTORNEY GENERAL OF
17 THE UNITED STATES OF AMERICA,

18 Respondents.

CASE NO. 07cv0857 BTM(AJB)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

19 Petitioner has filed a Petition for Writ of Habeas Corpus ("Petition") pursuant to 28
20 U.S.C. § 2241. In her Petition, Petitioner contends that Magistrate Judge Porter's order
21 certifying her extradition violated her due process rights under the U.S. Constitution. For the
22 reasons discussed below, Petitioner's Petition is **DENIED**.

23 **DISCUSSION**

24 The parties are familiar with the factual and procedural background of this case, which
25 need not be repeated here.

26 Petitioner's sole basis for relief is her contention that her due process rights were
27 violated when Magistrate Judge Porter granted the Government's motion to reopen the case
28 based on additional evidence on identity that was available previously. Analogizing to
Federal Rule of Civil Procedure 60(b), Petitioner argues that because the evidence of identity

1 was not newly discovered, it was unfair for Magistrate Judge Porter to reconsider her denial
2 of the request for extradition.

3 The Court first notes that while both the Government's motion to reopen [Docket # 22]
4 and Judge Porter's initial decision denying extradition [Docket # 23] were filed on the same
5 day (February 16, 2007), the Government's papers were filed first. Thus, on its face, Rule
6 60 is inapplicable. Furthermore, the Federal Rules of Civil Procedure simply do not apply
7 to extradition hearings. Matter of Requested Extradition of Smyth, 61 F.3d 711, 720-21 (9th
8 Cir. 1995).

9 Nothing prevents the government from reinstituting extradition proceedings after initial
10 unsuccessful attempts. Hooker v. Klein, 573 F.2d 1360, 1365 (9th Cir. 1978); Collins v. Lisel,
11 262 U.S. 426 (1923). A denial of a request for extradition is not a final judgment and does
12 not have res judicata effect. Hooker, 573 F.2d at 1367-68. Thus, Petitioner's argument that
13 she "should have some expectation of finality of a court's dispositive order" lacks merit in the
14 context of extradition proceedings.

15 In Bovio v. United States, 989 F.2d 255 (7th Cir. 1993), the petitioner argued that it
16 was a violation of due process for the magistrate judge to have allowed the government to
17 reopen the proceedings after the judge denied extradition. The petitioner objected that "the
18 government's subsequent effort at extradition was not pursuant to any new evidence but was
19 a blatant attempt to correct the deficiencies in an investigation which had been completed
20 five years previously." Id. at 260. In rejecting petitioner's claim, the Seventh Circuit
21 explained, "The government, as any other party, has the right to move for reconsideration
22 of a court's decision." Id. at 261. The court also noted that the government is permitted "to
23 file multiple extraditions requests against the same person." Id. at 261 n. 5.

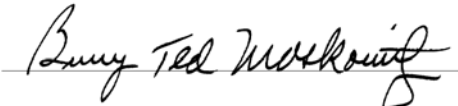
24 There is no due process right to the finality of a denial of extradition. The Magistrate
25 Judge properly exercised her discretion to allow reopening by the Government to establish
26 identity. Petitioner does not contend that the present record does not support the Magistrate
27 Judge's finding of extradictability. Therefore, the Petition for Writ of Habeas Corpus is
28 denied.

CONCLUSION

For the reasons discussed above, Petitioner's Petition for Writ of Habeas Corpus is **DENIED**. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

DATED: October 18, 2007


Honorable Barry Ted Moskowitz
United States District Judge